2008

State of Utah v. Jerry Cooper : Brief of Appellee

Utah Court of Appeals

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Case No. 20080413-CA

IN THE

UTAH COURT OF APPEALS

State of Utah,
Plaintiff/Appellee,

vs.

Jerry Cooper,
Defendant/Appellant.

Brief of Appellee

Appeal from convictions for four counts of knowingly filing a wrongful lien, a third degree felony, in the Third Judicial District Court of Utah, Salt Lake County, the Honorable Randall Skanchy presiding.

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STATEMENT OF JURISDICTION

Defendant appeals from convictions for four counts of knowingly filing a wrongful lien, a third degree felony. This Court has jurisdiction under UTAH CODE ANN. § 78A-4-103(2)(e) (West 2008).

STATEMENT OF THE ISSUES

1. May Defendant challenge Jury Instruction #34 on appeal where he expressly stated below that he had no objection to any of the proposed instructions?

Standard of Review. When a defendant affirmatively represents to the trial court that he has no objection to the proceedings, any subsequent claim of error falls within the scope of the invited error doctrine, which precludes appellate review. *See State v. Winfield*, 2006 UT 4, ¶ 21, 128 P.3d 1171 (declining to review Winfield's jury selection challenge where he affirmatively approved jury panel).

2. Was the evidence sufficient to support Defendant's jury conviction for four counts of filing a wrongful lien, and if not, was the insufficiency so obvious and fundamental that the trial court plainly erred by submitting four counts to the jury?

Standard of Review. "To demonstrate that plain error occurred in the context of a challenge to the sufficiency of the evidence, an appellant must show 'first that the evidence was insufficient to support a conviction of the crime[s] charged and second that the insufficiency was so obvious and fundamental that the trial court erred in submitting the case to the jury.'" *State v. Diaz*, 2002 UT App 288, ¶ 32, 55 P.3d 1131 (brackets in original) (quoting *State v. Holgate*, 2000 UT 74, ¶ 17, 10 P.3d 346).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UTAH CODE ANN. § 38-9-1(6) (West 2004):

> "Wrongful lien"' means any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:
>
> (a) expressly authorized by this chapter or another state or federal statute;
>
> (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
>
> (c) signed by or authorized pursuant to a document signed by the owner of the real property.

UTAH CODE ANN. § 38-9-5(2) (West 2004):

> A person who intentionally records or files or causes to be recorded or filed a wrongful lien with the county recorder is guilty of a third degree felony if, at the time of recording or filing, the person

knowingly had no present, lawful property interest in the real property and no reasonable basis to believe he had a present, lawful property interest in the real property.

STATEMENT OF THE CASE

Defendant was charged with four counts of communications fraud, a second degree felony, in violation of UTAH CODE ANN. § 76-10-1801 (West 2004), and four counts of filing a wrongful lien, a third degree felony, in violation of UTAH CODE ANN. §§ 38-9-1(6), 38-9-5(2) (West 2004). R1-3.[1] The trial court dismissed the communications fraud charges on the State's motion. R31. Following a two-day jury trial, Defendant was convicted as charged. R273. The trial court imposed the statutory prison term of zero to five years for each count, with two counts to be served consecutively and two counts to be served concurrently. R349-50. The trial court then suspended the prison terms and placed Defendant on a 36-month term of probation. R350. Defendant timely appealed. R392.

STATEMENT OF THE FACTS

Upset with the result of a quiet title suit in which he was a named defendant, Defendant recorded a lien in the Utah County Recorder's Office against the real property of the husband and wife plaintiffs, their attorney, and the judge, asserting each was personally liable to him for $4,200,000 in damages.

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[1] The pleadings in Volume I are numbered sequentially, R1-124, at which point the numbering restarts at R1 and continues through R203. There is no index for the first 124 pages of Volume I, where the information is found.

* * *

Richard and Mary Pace attended a Utah County tax sale in May 1997, where they purchased a 63% interest in a laundromat located in Provo, Utah. R462:61-62.[2] The Paces did not know who the owned the remaining 37% interest in the laundromat. *Id.* at 115. After making their purchase, the Paces drove by the laundromat, which was open for business. *Id.* at 62. But they did not enter, because there were "signs posted that said that if [they] were not—if [they] were not friendly to the establishment that force and—[they] could be endangered by entering." *Id.* Given these warning signs, the Paces viewed themselves as unwelcome at the laundromat, and did not exercise their interest in the property at that time. *Id.* at 114. The Paces paid the yearly property taxes on the laundromat, however, to maintain their 63% interest. *Id.* at 63. After investigating their options, the Paces hired a real estate attorney. *Id.* at 63; *see also id.* at 115.

Attorney Rivers began representing the Paces in 2002-03. *Id.* at 139. He performed a title search to discover all the individuals who could possibly claim an interest in the laundromat. *Id.* at 139-40. There were so many different documents

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[2] Only the first of two transcript volumes covering Defendant's two-day jury trial held on 23-24 January 2008, is numbered in the record. *See* R462. However, the internal page numbers of the second volume continue from the first volume; accordingly, the State does not distinguish between the first and second transcript volumes in its citation to the record.

pertaining to the laundromat, however, that Rivers concluded there was no way he could determine the legal owner. *Id.* at 140. Accordingly, Rivers filed suit on behalf of the Paces to quiet title to the laundromat. *Id.* Defendant was one of the individuals listed on the title search and was thus named as a defendant in the Paces' civil suit. *Id.* at 140-41.

The Paces' quiet title action was heard by Fourth Judicial District Court Judge Davis in 2004. *Id.* at 245. Judge Davis recalled that there were approximately 12 named defendants, including Defendant. *Id.* at 246. Judge Davis ruled in January 2004 that the Paces had perfected their 63% interest in the laundromat. *Id.* at 247. Defendant did not object to Judge Davis's findings and conclusions, nor did he file an appeal. *Id.*

Approximately eight months later, in September 2004, the Paces, attorney Rivers, and Judge Davis all began receiving numerous purported legal documents from Defendant. *Id.* at 64-65, 104-06, 143-44, 248-49; *see also* State's Exh. ## 1-7. Some of the documents were served, some were received by certified mail, and others were sent via regular mail. *Id.* at 65, 143. The documents purported to give notice that unless Defendant's demands were met, Mary Pace, Richard Pace, attorney Rivers, and Judge Davis each owed Defendant $4,200,000 in damages. *Id.* at 75, 106, 248-49; *see also* State's Exh. ## 1-4, 6-7.

Frightened and concerned, the Paces consulted attorney Rivers, who advised them that there was no need to respond to Defendant's documents because, among other things, they were not filed in any recognized court of law. *Id.* at 144. Judge Davis referred the documents he received from Defendant to the Administrative Office of the Courts (AOC). *Id.* at 248-251.

In addition to these purported legal documents, Mary Pace, Richard Pace, attorney Rivers, and Judge Davis each received a document from Defendant entitled "Administrative Judgment." *See* R462 at 73-75, 105-06, 142-46, 182-83.[3] That document was recorded in the Utah County Recorder's Office on 15 November 2004. State's Exh. #5 and Defendant's Exhibit #9 (capitalization omitted). Defendant's father recorded the Administrative Judgment document at Defendant's request. R462:283. Similar to the earlier-received documents, the Administrative Judgment document declared that Mary Pace, Richard Pace, attorney Rivers, and Judge Davis were each liable to Defendant for $4,200,000. *See* State's Exh. # 5 at 1, 11, and Defendant's Exh. # 9 at 1, 11. The Administrative Judgment was signed by both Defendant and Kenneth James Nielsen, who purported to be a "Private Administrative Hearing Officer." *See* R462:283; *see also* State's Exh. #5 at 14, and

[3] State's Exh. # 5 differs from Defendant's Exh. #9 only in that Defendant's Exh. #9 includes copies of earlier-sent documents. *See* R462:249. A copy of State's Exh #5 is attached in Addendum A.

Defendant's Exh. #9 at 14. The first page of the document separately listed Richard Pace, Mary Pace, attorney Rivers, and Judge Davis, and included the Pace's and Rivers' home addresses. State's Exh. #5 at 1 and Defendant's Exh. #9 at 1. The address listed for Judge Davis was the street address for the Fourth Judicial District Court building. *Id.*

Concerned that a $4,200,000 lien had been filed against him, Judge Davis forwarded the Administrative Judgment document to the AOC. *Id.* at 251; *see also id.* at 256-259. Thereafter, the AOC filed a petition to nullify the lien against Judge Davis. *Id.* at 251-52; *see also* State's Exh. #13. On 20 May 2005, Third Judicial District Court Judge Quinn entered an Order that (1) "[t]he document entitled 'Administrative Judgment' recorded on November 15, 2004 in the office of the Utah County Recorder against [Judge] Davis [was] a wrongful lien under Title 38, Chapter 9 of the Utah Code"; (2) the "document [was] void ab initio"; (3) Judge Quinn's Order "may be recorded in the Utah County Recorder's Office, along with a legal description of [Judge] Davis' property to have the wrongful lien removed from any property owned by [the judge]"; and (4) Judge Davis was entitled to reasonable costs and attorney's fees. State's Exh. #13 (a copy is attached in Addendum B). While Judge Quinn's civil ruling declared Defendant's lien void as to Judge Davis's property, it did not expressly void Defendant's lien on the property owned by the Paces or attorney Rivers. R462:254.

At the criminal trial on the instant charges of filing a wrongful lien, the Paces, attorney Rivers, and Judge Davis all testified that they had no contractual obligations to Defendant and that they did not otherwise owe him money for which he would be entitled to record the lien. *See* R462:75, 106, 146-47, 245-46.

Although neither the Paces nor attorney Rivers had tried to sell their respective homes, they were all were concerned that the $4,200,000 lien Defendant had recorded against each of them would be an encumbrance to any future attempt to sell their homes or other property they may possess. *See id.* at 81-82, 101, 104, 107-112, 126, 144-46. For example, Rivers, a real estate attorney, testified that in his experience, they would be unable to get title insurance. *Id.* at 146, 149-50. While Rivers had been able to obtain a second mortgage on his own home after Defendant filed the $4,200,000 lien against him, he explained that the transaction had been handled by a mortgage company owned by a neighbor and friend for whom he performed legal work. *Id.* at 152-53, 176. But for his close relationship with the mortgage company, Rivers believed that Defendant's $4,200,000 lien would have been an encumbrance to obtaining the second mortgage. *Id.* at 176.

In January 2005, Detective O'Bryant, an investigator with the Utah County Attorney's Office, opened an investigation into Defendant's conduct at the behest of the AOC. *Id.* at 191, 193-94. After Detective O'Bryant contacted Defendant, Defendant sent him a letter in which he admitted having the Administrative

Judgment document recorded. *Id.* at 196; *see also* Defendant's Exh. #12. Detective O'Bryant also asked Defendant to remove the liens against the Paces, attorney Rivers, and Judge Davis, but noted that Defendant had not done so by the time of trial. *Id.* at 197. Finally, Detective O'Bryant investigated whether Kenneth James Nielsen had authority to act as an administrative judge in the State of Utah and determined that he did not. *Id.* at 195.

Defendant, who represented himself at trial, denied that the Administrative Judgment document he had recorded in the Utah County Recorder's Office constituted a lien against property owned by the Paces, attorney Rivers, or Judge Davis. *Id.* at 277-78. Rather, Defendant opined that he recorded the document to alert others that he owned the laundromat, and that his only intent in listing the addresses of the Paces, attorney Rivers, and Judge Davis was "to identify where these people were being contacted at. There was no intent to lien or have the appearance of a lien." *Id.* at 277. Rather, Defendant opined that if he had intended the document to be a lien, he would have used legal descriptions of the Paces', attorney Rivers', and Judge Davis' property, rather than their mailing addresses. *Id.* Finally, Defendant opined that he was personally unaware of any encumbrance on the Paces', attorney Rivers', or Judge Davis' property. *Id.* at 279.

On cross examination, Defendant acknowledged that although he knew that other individuals considered the Administrative Judgment document to be a

wrongful lien, he had taken no action to remove the wrongful lien. *Id.* at 281. Nor did he amend the document to clarify that it was not in fact a lien, even after he knew that he was to be criminally charged. *Id.* at 281-82. Defendant conceded that the word lien was used throughout the document, and that "the document refers to itself as a commercial lien, and also as a lien hold claim, and it states that it can attach to property." *Id.* at 281. Defendant also acknowledged that Kenneth James Nielsen was not an authorized administrative judge, and that the Administrative Judgment document had not been filed in any recognized court of competent jurisdiction. *Id.* at 284. Finally, Defendant acknowledged that he had known that he had a remedy in civil court if he disagreed with the result of the quiet title action. *Id.* at 288.

At the close of the evidence, the parties discussed the proposed jury instructions. *Id.* at 290-92. The trial court specifically asked if Defendant had any objection to proposed jury instructions 28 through 34: "[Defendant], any objections to these instructions?"[4] *Id.* at 290. Defendant, who as noted, was acting pro se,

[4] The first page of Jury Instruction # 34 states that "[t]he document entitled 'Administrative Judgment' recorded on November 15, 2004 in the office of the Utah County Recorder against [Judge] Davis is a wrongful lien under Title 38 Chapter [sic] of the Utah Code." R268. The second page of the instruction stated: "Judge Anthony Quinn, Case No. 040906021 MI, Order dated May 20, 2005, Third District Court, County of Salt Lake, State of Utah." R269 (a complete copy of the instruction is attached in Addendum C).

expressly stated that he had no objection: "No, your Honor." *Id.* at 291. The trial court then asked if Defendant had any objection to additional instructions proposed by the State: "Any objections to these?" *Id.* Defendant again said "No." *Id.*

SUMMARY OF THE ARGUMENT

Point I. Defendant's challenge to Jury Instruction #34 is precluded by the invited error doctrine. The invited error doctrine applies because Defendant expressly stated on the record that he had no objection to any of the proposed jury instructions. Defendant thus invited any possible error in the instructions and his claim should be denied on that ground.

Point II. Defendant asserts that the evidence was insufficient to find him guilty of four separate counts of filing a wrongful lien, because he caused to be recorded only one document. Contrary to his assertion, however, Defendant was properly convicted of four separate counts. The Administrative Judgment document recorded in the county recorder's office purported to encumber property of four different owners, each of whom Defendant asserted were liable to him for $4,200,000 in damages. Because the focus of the wrongful lien statute is on protecting property owners, the statute does not distinguish between recording one document that purports to encumber property belonging to four different owners, and recording four different documents that each purport to encumber property of a different owner. Defendant is just as culpable under the first scenario as he suggests

a person would be under the second scenario. He thus fails to show any insufficiency in the evidence, let alone an insufficiency so obvious and fundamental that the trial court plainly erred by submitting four separate counts of filing a wrongful lien to the jury.

ARGUMENT

Although Defendant has retained counsel on appeal, he was a "self-represented party" at trial. *See Allen v. Friel*, 2008 UT 56, ¶ 11, 194 P.3d 903. As such, he was "entitled to every consideration that may reasonably be indulged." *Id.* (case citation and quotation marks omitted). "However, [a]s a general rule, a party who represents himself will be held to the same standard of knowledge and practice as any qualified member of the bar . . ." *Id.* (case citation and quotation marks omitted). Additionally, "'reasonable' indulgence is not unlimited indulgence." *Id.* There is thus no requirement that courts "attempt to redress the ongoing consequences of the party's decision to function in a capacity for which he is not trained." *Id.*; *see also State v. Winfield*, 2006 UT 4, ¶ ¶ 19-21, 28, 128 P.3d 1171 (declining to excuse Winfield from invited error doctrine and preservation rules where he acted pro se at trial).

I.

DEFENDANT'S CHALLENGE TO JURY INSTRUCTION #34 IS PRECLUDED BY THE INVITED ERROR DOCTRINE BECAUSE HE AFFIRMED ON THE RECORD THAT HE HAD NO OBJECTION TO THAT OR ANY OTHER INSTRUCTION

In Point I of his brief, Defendant asserts that Jury Instruction #34, which instructed that the Administrative Judgment document was a wrongful lien, violated his state and federal constitutional rights to have a jury determine all the elements of the charged offense. Aplt. Br. at 11-12. Defendant acknowledges that he failed to preserve this issue below, but asserts that it is nonetheless reviewable because the instruction constituted structural error, and because, in any event, it was plainly erroneous. Aplt. Br. at 1, 16-25. Defendant, however, not only failed to object to Jury Instruction #34, but he also affirmed on the record that he had no objection to that or any other instruction. R462:290-291. Accordingly, his claim of error—be it structural or plain—is precluded by the doctrine of invited error.

Utah's "invited error doctrine arises from the principle that a party cannot take advantage of an error committed at trial when that party led the trial court into committing the error." *Pratt v. Nelson*, 2007 UT 41, ¶ 17, 164 P.3d 366 (quoting *State v. Winfield*, 2006 UT 4, ¶ 15, 128 P.3d 1171 (internal quotation marks and citation omitted)); *see also State v. Dunn*, 850 P.2d 1201, 1220 (Utah 1993) (same). "By precluding appellate review, 'the doctrine furthers this principle by "discouraging

parties from intentionally misleading the trial court so as to preserve a hidden ground for reversal on appeal.'"" *Pratt*, 2007 UT 41, ¶ 17 (quoting *State v. Geukgeuzian*, 2004 UT 16, ¶ 12, 86 P.3d 742). A defendant is "'not entitled to both the benefit of not objecting at trial and the benefit of objecting on appeal.'" *Id.* (quoting *State v. King*, 2006 UT 3, ¶ 13, 131 P.3d 202) (internal quotation marks and citation omitted); *see also State v. Bullock*, 791 P.2d 155, 158 (Utah 1989) ("[W]e do not appraise all rulings objected to for the first time on appeal under the plain error doctrine. . . . [I]f trial counsel's actions amounted to an active, as opposed to a passive, waiver of objection, we may decline to consider the claim of plain error"). Rather, the invited error doctrine encourages counsel "'to actively participate in all proceedings to raise any possible error at the time of its occurrence," thereby "forti[ying] our long-established policy that the trial court should have the first opportunity to address a claim of error.'" *Pratt*, 2007 UT 41, ¶ 17 (quoting *Winfield*, 2006 UT 4, ¶ 15) (internal quotation marks and citation omitted).

Here, Defendant's statements to the trial court that he had no objection to any of the proposed jury instructions, affirmatively invited any possible error therein. *See State v. Pinder*, 2005 UT 15, ¶¶ 62-63, 114 P.3d 551 (declining to review claimed instructional error where Pinder "signal[ed] by an affirmative act that he had no objection"). As a consequence of Defendant's express statements below, his claim of instructional error on appeal is precluded, whether characterized as structural or

plain error. *See Geukgeuzian*, 2004 UT 16, ¶¶ 8-12 (holding invited error doctrine precluded court from addressing purported structural error); *State v. Hamilton*, 2003 UT 22, ¶ 54, 70 P.3d 111 (holding jury instruction may not be assigned as error "if counsel, either by statement or act, affirmatively represented to the court that he or she had no objection to the jury instruction"); *State v. Harper*, 2006 UT App 178, ¶ 12, 136 P.3d 1261 (declining plain error review where counsel stated he had no objections to jury instructions); *State v. Malaga*, 2006 UT App 103, ¶ 7, 132 P.3d 703 (declining to review purported structural error where counsel "affirmatively approved the instructions at trial"); *State v. Chaney*, 1999 UT App 309, ¶¶ 52-55, 989 P.2d 1091 (declining to review elements instruction that omitted mental state element, where counsel invited error); *State v. Perdue*, 813 P.2d 1201, 1205 (Utah App. 1991) (rejecting purported claim of structural error in reasonable doubt instruction where counsel invited error); *cf. Winfield*, 2006 UT 4, ¶ 13 (declining to review jury selection process for plain error, where Winfield, acting pro se, affirmatively approved panel); *State v. Person*, 2009 UT App 51, ¶ 10, 204 P.3d 880 (declining plain error review where counsel conceded evidentiary hearing could be held in Person's absence).

II.

THE EVIDENCE IS SUFFICIENT TO SUPPORT DEFENDANT'S JURY CONVICTION FOR FOUR COUNTS OF FILING A WRONGFUL LIEN; HE THUS FAILS TO SHOW THAT THE TRIAL COURT PLAINLY ERRED IN SUBMITTING FOUR SEPARATE COUNTS TO THE JURY

In Point II of his brief, Defendant asserts that "the evidence was insufficient to find [him] guilty of four separate counts of filing a wrongful lien." Aplt. Br. at 25 (bolding and capitalization omitted). Specifically, Defendant asserts "that [he] caused to be filed a single document entitled 'Administrative Judgment.' Thus, . . . he should have been charged with only one count of filing a wrongful lien." Aplt. Br. at 25.

Defendant asserts this issue was preserved at preliminary hearing where counsel argued he should be bound over on only one count of filing a wrongful lien, as opposed to four counts. Aplt. Br. at 29 (citing R465:27-31).[5] Defendant's challenge at preliminary hearing was mooted, however, once he was convicted beyond a reasonable doubt for four counts of filing a wrongful lien in district court. *See State v. Quas*, 837 P.2d 565, 566 (Utah App. 1992) (recognizing challenge to bindover order is mooted once a defendant is convicted). Defendant did not thereafter argue in district court that only one count of filing a wrongful lien should

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[5] While Defendant was represented by retained counsel at preliminary hearing, as noted, he proceeded pro se at trial.

be submitted to jurors, nor did he ask that his four convictions be merged. Consequently, Defendant's challenge to the sufficiency of the evidence to support four separate counts of filing a wrongful lien, as opposed to one count, may be reviewed only for plain error. *See* Aplt. Br. at 26 (asserting unpreserved claims may be reviewed for plain error).

"To demonstrate that plain error occurred in the context of a challenge to the sufficiency of the evidence, an appellant must show 'first that the evidence was insufficient to support a conviction of the crime charged and second that the insufficiency was so obvious and fundamental that the trial court erred in submitting the case to the jury.'" *State v. Diaz*, 2002 UT App 288, ¶ 32, 55 P.3d 1131 (quoting *State v. Holgate*, 2000 UT 74, ¶ 17, 10 P.3d 346). Defendant has not made either showing.

A court will find the evidence insufficient to support a jury verdict only when, viewed in a light most favorable to the verdict, the evidence is so "inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he [or she] was convicted." *State v. Brown*, 948 P.2d 337, 343 (Utah 1997) (alteration in original) (citation omitted). In assessing the sufficiency of the evidence, the court will "review the evidence and all inferences which may reasonably be drawn from it in the light most

favorable to the verdict." *State v. Shumway*, 2002 UT 124, ¶ 15, 63 P.3d 94 (internal quotation marks and citation omitted).

Here, Defendant acknowledges that he is guilty of filing one wrongful lien, disputing only the sufficiency of evidence to support his conviction for three additional counts: "at most, the evidence established only that [Defendant] caused to be recorded one wrongful lien that encumbered four different owner's interest in a certain real property." Aplt. Br. at 28. Defendant's claim lacks merit.

To prove filing a wrongful lien, the prosecution must show, beyond a reasonable doubt, that a person intentionally or knowingly recorded or caused to be recorded, "any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed" the document "is not" "expressly authorized" by statute, court order or judgment, or the owner of the real property. UTAH CODE ANN. § 38-9-1(6) (West 2004); *see also* UTAH CODE ANN. § 38-9-5(2) (West 2004) ("A person who intentionally records or files a causes to be recorded or filed a wrongful lien with the county recorder is guilty of a third degree felony if, at the time of recording or filing, the person knowingly had no present lawful property interest in the real property and no reasonable basis to believe he had a present, lawful property interest in the real property").

Defendant does not dispute that the State established any of the foregoing elements beyond a reasonable doubt with regard to Richard Pace, Mary Pace, or attorney Rivers. Indeed, he does not dispute that (1) he caused the Administrative Judgment document or lien to be recorded; (2) he had no present, lawful interest in Richard Pace's, Mary Pace's, or attorney Rivers' real property and no reasonable basis for believing he did; and (3) the document encumbered Richard Pace's, Mary Pace's, and attorney Rivers' real property. *See* Aplt. Br. at 27-30.[6]

With one exception, Defendant also does not dispute that the State established any of the foregoing elements beyond a reasonable doubt with regard to Judge Davis. Defendant disputes that the Administrative Judgment document constituted a wrongful lien against Judge Davis, because he did not list the judge's residential address in the document. *See* Aplt. Br. at 26-28. However, Jury Instruction #34 instructed that the Administrative Judgment document was a wrongful lien against Judge Davis. *See* R268-69. Because Defendant expressly stated that he had no objection to the instruction, the doctrine of invited error precludes his challenge to the sufficiency of the evidence in this regard, just as it precludes his challenge to the instruction itself. *See* Point I, above.

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[6] While Richard and Mary Pace did not own separate property, they were served separate copies of the Administrative Judgment document. *See* R462:106 (affirming "separate copies [were] sent to [Richard] and one sent to Mary").

As noted, the thrust of Defendant's sufficiency challenge is that because he filed only one document, albeit one that "encumbered four different owner's interest in certain real property," he is guilty, at most, of only one count of filing a wrongful lien. Aplt. Br. at 28. As support, Defendant purports to quote the "plain language" of the wrongful lien statute:

> [Defendant] asserts that the plain language of the statute shows that a person is "guilty of a single third degree felony" if he "records or files . . . a wrongful lien . . . if" he has no lawful interest in the property. *See* U.C.A. § 38-9-5(2).

Aplt. Br. at 30 (emphasis in original). Based on the quoted language, Defendant asserts that "because he filed only one document, he should have faced only one count of filing a wrongful lien." Aplt. Br. at 30.

Defendant misquotes the wrongful lien statute. The second highlighted word—"single"—appears nowhere in UTAH CODE ANN. § 38-9-5(2) (West 2004):

> A person who intentionally records or files or causes to be recorded or filed a wrongful lien with the county recorder is guilty of a third degree felony if, at the time of recording or filing, the person knowingly had no present, lawful property interest in the real property and no reasonable basis to believe he had a present, lawful property interest in the real property.[7]

Thus, contrary to Defendant's assertion, the plain language of the wrongful lien statute does not limit the State to filing a "single" wrongful lien charge per recorded

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[7] Although Section 38-9-5 has since been repealed, *see* Laws 2005, c. 93 § 12, it was in effect in November 2004, when the Administrative Judgment document was recorded.

document. Indeed, this case illustrates why Defendant's construction is nonsensical.

The Administrative Judgment document Defendant caused to be recorded here purports to encumber the real property of four different owners, each of whom was served with a separate copy of the lien. Thus, the real property of all four owners named in the lien was encumbered the same as if Defendant had filed four separate liens. Yet under Defendant's reading of the statute, the State could prosecute on behalf of only one of the four affected property owners. But the wrongful lien statute does not distinguish between recording one document that purports to encumber property belonging to several different owners, and recording several documents that purport to encumber property belonging to different owners. Rather, the focus of the wrongful lien statute is on protecting affected property owners:

> A person who intentionally records or files or causes to be recorded or filed a wrongful lien with the county recorder is guilty of a third degree felony if, at the time of recording or filing, *the person knowingly had no present, lawful property interest in the real property and no reasonable basis to believe he had a present, lawful property interest in the real property.*

UTAH CODE ANN. § 38-9-5(2) (emphasis added).

Given the statute's focus on protecting property owners, a plain reading authorizes the State to prosecute on behalf of all affected owners, whether identified in a single recorded document as here, or in separately recorded documents. The

State's construction makes sense because Defendant is just as guilty of purporting to encumber the real property of four different owners under the first scenario as he suggests he would be under the second scenario. *See* Aplt. Br. at 30 ("If [Defendant] had filed four documents, then he would have been subject to four charges"). Accordingly, Defendant's jury convictions for filing wrongful liens against Richard Pace, Mary Pace, attorney Rivers, and Judge Davis should be affirmed.

In sum, Defendant has not shown, and cannot show, that the trial court committed plain error in submitting four counts of filing a wrongful lien to the jury. Certainly, Defendant has not shown any insufficiency in the evidence, let alone an obvious and fundamental insufficiency in the evidence. *Diaz*, 2002 UT App 288, ¶ 32 (quoting *Holgate*, 2000 UT 74, ¶ 17).[8]

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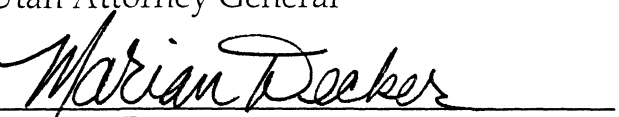
[8] In a document entitled "Verified Objection and Supplement to Brief of Appellant Filed by Counsel for Appellant," which Defendant filed pro se, and which defense counsel adopted via letter, Defendant suggests that the evidence was insufficient to show that the Administrative Judgment document was a wrongful lien or that any owner's property was actually encumbered. Defendant's claim is inadequately briefed. *See State v. Sloan*, 2003 UT App 170, ¶ 15, 72 P.3d 138 (refusing to consider inadequately brief argument). Rule 24(a)(9), Utah Rules of Appellate Procedure, requires an appellant to include his "contentions and reasons . . . with respect to the issues presented," including "citations to the authorities, statutes, and parts of the record relied on." Utah courts have consistently held that issues not properly briefed should not be addressed on appeal. *See State v. Wareham*, 772 P.2d 960, 966 (Utah 1989). "'A reviewing court is entitled to have the issue clearly defined with pertinent authority cited.'" *State v. Snyder*, 932 P.2d 120, 130 (Utah App. 1997) (quoting *State v. Bishop*, 753 P.2d 439, 450 (Utah 1988)).

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted 20 April 2010.

MARK L. SHURTLEFF
Utah Attorney General



MARIAN DECKER
Assistant Attorney General
Counsel for Appellee

Defendant's spare reference to the record does not comply with rule 24(e). Moreover, his insufficiency claim is unsupported by citation to pertinent statutes and case authority; thus, Defendant's claim is necessarily devoid of meaningful analysis. *State v. Price*, 827 P.2d 247, 249-50 (Utah App. 1992).

This Court is not "'a depository in which the appealing party may dump the burden of argument and research.'" *State v. Jaeger*, 1999 UT 1, ¶ 31, 973 P.2d 404 (quoting *Bishop*, 753 P.2d at 450)). Accordingly, Defendant's insufficiency claim should be rejected. *See id.* (refusing to consider claim due to lack of meaningful analysis); *Wareham*, 772 P.2d at 966 (refusing to address claim where brief "wholly lack[ed] legal analysis and authority").

In any event, "when a court with proper jurisdiction enters a final judgment, . . . that judgment can only be attacked on direct appeal." *State v. Hamilton*, 2003 UT 22, ¶ 25, 70 P.3d 111. Defendant did not directly appeal Judge Quinn's ruling that the Administrative Judgment document constituted a wrongful lien as to Judge Davis, nor did he file a motion to have it set aside pursuant to Rule 60(b) of the Utah Rules of Civil Procedure. "Because [Defendant] failed to use any of the available legal avenues for challenging" Judge Quinn's ruling, "he has waived any right to argue that [it] was invalid." *Hamilton*, 2003 UT 22, ¶ 31. While Judge Quinn's ruling did not expressly rule that the Administrative Judgment document constituted a wrongful lien as to either of the Paces or attorney Rivers, the evidence sufficed to show that the document "purport[ed] to create a lien or encumbrance" on their property. *See* section 38-9-1(6). Indeed, Defendant admitted that the term "lien" appears throughout the document and that it also "states that it can attach to property." R462:281.

CERTIFICATE OF SERVICE

I certify that on April 21, 2010, two copies of the foregoing brief were

☑ mailed ☐ hand-delivered to:

Aaron P. Dodd
Fillmore Spencer, LLC
3301 North University Avenue
Provo, Utah 84604

A digital copy of the brief was also included: ☑ Yes ☐ No

Melissa Dreyer

Addenda

Addendum A

IN THE OFFICE OF RECORDER
Recording Requested by:
Jerry C. Cooper, Record Owner
AND WHEN RECORDED MAIL TO:
Jerry C. Cooper
245 Astro Drive
Kelso, Washington [98626]

ENT 128768:2004 PG 1 of 35
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2004 Nov 15 3:48 pm FEE 78.00 BY LJ
RECORDED FOR COOPER, RICHARD

Utah county
The State of Utah
The united States of America, anno Domini 1791

ADMINISTRATIVE JUDGMENT

Claim AJ-2 7-21-98

[RE: Identified as Amended Complaint, 27 Dec, AD 2002, Civil No. 020408808: Parties]
[PACE v COOPER: Court, FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY, STATE OF UTAH]

Jerry C. Cooper
245 Astro Drive
Kelso, Washington
For Himself and Two Private Entities:
COOPER FAMILY CHRISTIAN EQUITY TRUST
aka, "CFT MANAGEMENT", and "CFT",
CELESTIAL ORGANIZATION GROUP
aka, "COG"

Aggrieved Party/Creditor

against

RICHARD W. PACE, 1350 East 300 North
American Fork, Utah 84003
MARY J. PACE, 1350 East 300 North
American Fork, Utah 84003
RODNEY W. RIVERS, 497 North 800 East
Lindon, Utah 84042
LYNN W. DAVIS, Judge, % 125 North 100 West
Provo, Utah 84601

Aggressor(s)/Respondent(s)/Debtor(s)

VERIFICATION OF THE ADMINISTRATIVE RECORD

County of Washington)
)
The State of Utah)

S.S.
Verified Declaration

Declarant states that he is competent to be a witness, that the facts contained herein are true, correct and complete, and not misleading, to the best of Declarant's first hand knowledge amd belief under the penalty of perjury pursuant to the Law of The State of Utah.

I, your Declarant, do testify that I have had in my possession each of the original documents identified as Tracking Numbers 7-21-98-D1 AFFIDAVIT OF NOTICE AND DEMAND, and Tracking No. 7-21-98-E1 NOTICE OF FAULT, and Tracking No. 7-21-98-F1 Declaration and Notice of DEFAULT, DISHONOR and DECISION, and I have examined them and it is my finding that the following paragraphs, pages and contents are each a true and correct presentment as found in the original instruments.

THE ADMINISTRATIVE RECORD SHOWS THE FOLLOWING:

This Matter is In the Nature of an Independent Private International Natural Law Administrative Remedy wherein: EQUALITY UNDER THE LAW IS PARAMOUNT AND MANDATORY UNDER LAW.

The Following Definitions of Terms Apply Herein

"NOTICE" means in any form, actual communicated knowledge of any fact, intended to appraise a person of matters in which his interest are involved, which would put an ordinarily prudent person on inquiry from a proper source, when the sought to be affected by the notice knows thereby, giving duty to the Party notified to take action, as may be justified.

"commercial paper" means instruments used in the broadest sense of the term such as offers, drafts, complaints, summons, warrants, etc. which may involve accommodation parties or sureties, including any type of business or activity which is carried on for a profit, gain, enrichment or satisfaction, or benefit.

"Stewardship" and "Trusteeship" means an appointee's duties who oversees the carrying out of the will of the organization pursuant to and in conformity with its authorizing indenture with consideration and meeting of minds under contract.

"Jury Trial" means as an "Amendment VII" trial by 12 jurors and does not mean an "advisory jury" wherein the jury lacks verdict power to bind the court.

"Tax Deed" means instrument #81081, dated 15 May, 1997, Utah County Recorder, Utah.

"Fault" means "Negligence; and error or defect of judgment or of conduct; and deviation from prudence, duty or rectitude; any shortcoming or neglect of care or performance resulting from inattention, incapacity or perversity; a wrong tendency, course, or act; bad faith or mismanagement; neglect of duty. The word connotes an act to which blame, censure, impropriety, shortcoming or culpability attaches."

"Bad Faith" means "the opposite of good faith, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty of come contractual obligation, not prompted by an honest mistake as to one's rights or duties, but rather implies the conscious doing or a wrong because of dishonest purpose or moral affirmatively operating with furtive design or ill will."

"Default" means "By its derivation, a failure, an ommision of that which ought to be done. Specifically, the omission or failure to perform a legal or contractual duty, to observe a promise or discharge an obligation; or to perform an agreement."

"Co-extensive business agreement" means an agreement in equity brought about after receipt of a Notice of Fault wherein there is a failure to respond, and such is deemed as an acceptance of the facts as the stipulations thereto, and that is the co-extensive business agreement entered into, which is enforced in equity.

"Commercial Grace" means "72 hours of time" to be absolutely sure as to the cause of lack of response to a presentment, to affirm if for reason of oversight, neglect, or inattention to notice, or to determine if the non-response was in fact intentional, malicious, and done with intent to do commercial harm.

The Following Definitions of Terms Apply Herein

"Clearfield Trust Doctrine" is stare decisis and imposes Government courts to descend to level of a mere private corporation, and take on the characteristics of a mere private citizen...Where private corporate commercial paper and securities is concerned...unless it is the Holder in Due Course of some contract or commercial agreement between it, and the one on whom it demands for performance are made, and is willing to produce said document, and to place the same into evidence before trying to enforce its demands.

"Natural Law" means "The law of nature dictated by God himself is binding in all countries and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all force and all their authority from this origin." (Blackstone's Commentaries of Law, 1776)

"ACCOMMODATION PARTY" means one who signs commercial paper in any capacity for the purpose of lending his name, to give credit, to another party to instrument(s) signed:

"SURETY" means one at the request of another, for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third party; herein includes the ACCOMMODATION PARTY.

"Commercial Lien" means in the nature of a commercial lien and is not a lis pendens lien, is not a statutory lien, and is not a common law lien, and does not require a court process for its establishment, validity or execution.

"Right of Lien" means a right to enforce a charge upon property of another for payment or satisfaction of a debt that is designated in United States Dollars.

"Lien Hold Claim" means a one hundred one year term to enforce a Commercial Lien.

"Peace and Dignity" means the inherited public order through Natural Law principles binding in all countries, authoried by God as a gift to mankind, which God is referred to as the "Almighty God", the giver of all "rights".

"TACIT PROCURATION" means by operation of law, one person's silence gives power of attorney in fact to another person as proxy to act for the silent person, by the silent person's authority.

"Due Process of Law" means: "Minimal procedural due process is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must be notified." Cf.Fuentes v Shevin, 407 US 79.

"Condition of Commercial Fault" means Fault by negligence and Fault by bad faith.

"Dollars"/"$" means United States Dollars

"Aggrieved Party" means a Party entitled to resort to a remedy.

Notice of and Entry of DEFAULT

This is a Notice of Default upon two instruments titled AFFIDAVIT OF NOTICE AND DEMAND, Tracking No. 7-21-98-D1, with three Attachments, #1 is Administrative Record in 3 parts and the Administrative Judgment, #2 is Page one and two of Civil No. 020408808, and #3 is a copy of ORDER dated 7 January, AD 2004, and NOTICE OF FAULT, Timely Private Notice of Condition of Commercial Fault for Failure to Respond to AFFIDAVIT OF NOTICE AND DEMAND, Tracking No. 7-21-98-E1, with four proof of service Exhibits 1. 2. 3. and 4., as presented to the RESPONDENTS on the 7th day of October, AD 2004, and on 12th day of October, AD 2004, respectively.

By the terms and conditions and pursuant to the provisions contained in said DEMAND, as to what would be acceptable as performance, RESPONDENTS' non answer is a positive act of performance under the terms and therefore created a binding contract wherein each RESPONDENT is under obligation individually to timely and in good faith answer, object, rebut, refute, and/or otherwise respond. Accordingly each RESPONDENTS' failure to respond places each RESPONDENT individually at DEFAULT, and DEFAULT is hereby Entered.

By said DEFAULT, each RESPONDENT, individually, is deemed to be in BAD FAITH and NEGLIGENT in failing to respond and adjudicate any problems between CREDITOR and RESPONDENTS. As a direct and approximate result of this default RESPONDENT(S), severally and jointly, are estopped from bringing any act or actions against the CREDITOR as to the following factual ISSUES, listed in said FAULT as Items 1, 2 & 3.

1. Jerry C. Cooper is a Beneficiary to the Original organic law Jurisdiction.
2. Paragraphs "IV." and "V." of "CONCLUSIONS OF LAW," of ADMINISTRATIVE JUDGMENT #AJ 7-21-98, are valid, in force and binding.
3. Each Verified ISSUE of Fact for Establishment of CLAIMS and OBLIGATIONS, ISSUE #1 through and including ISSUE #72 **is deemed as admitted undisputed Fact by TACIT PROCURATION, Stare Decisis.**

Notice of and Entry of DISHONOR

Each RESPONDENT'S failure to respond to the NOTICE OF FAULT within three days after receipt, resulted in a DEFAULT thereto, being issued with DISHONOR Entered. A DISHONOR constitutes a stipulation to, and an admission of, the facts contained in the "Notice of Each RESPONDENT'S Stipulations/Admissions pursuant to Notice of Fault", which lists Items 1., 2. and 3. above. The principle, "Notice to agent is notice to principal, and Notice to Principal is notice to all agents," applies herein.

Notice of and Entry of DECISION

THE ADMINISTRATIVE RECORD SHOWS THE FOLLOWING:

F I N D I N G S O F F A C T

A. On the 7th day of September, AD 2004, Jerry C. Cooper, hereinafter "Creditor", did cause service upon RICHARD W. PACE, MARY J. PACE, RODNEY W. RIVERS, AND LYNN W. DAVIS, hereinafter "Debtor(s)", individually, with a true and correct copy of an instrument titled AFFIDAVIT OF NOTICE AND DEMAND, Tracking No. 7-21-98-D1, hereinafter "DEMAND", with three Attachments.

B. That examination of Creditor's private files and records in this cause shows that each RESPONDENT was served by private or U.S. Mail service a true and correct copy of DEMAND on the 7th day of September, AD 2004, a copy of proof of service is attached hereto as Exhibits 1, 2, 3, and 4.

C. That more than twenty-one calendar days, as were provided, have elapsed since the day each RESPONDENT was served with a copy of DEMAND, excluding the date thereof, and no RESPONDENT has made a response to current date.

D. On the 12th day of October, AD 2004, Creditor did cause service upon each RESPONDENT, individually, with a true and correct copy of an instrument titled NOTICE OF FAULT, Timely Private Notice of Condition of Commercial Fault for Failure to Respond to AFFIDAVIT OF NOTICE AND DEMAND, Tracking No. 7-21-98-E1, with four proof of service Exhibits 1., 2., 3., and 4.

E. That examination of Creditor's private files and records in this cause shows that each RESPONDENT was served by private or U.S. Mail service a true and correct copy of NOTICE OF FAULT on the 12th day of October, AD 2004, a copy of proof of service is attached hereto as Exhibits 5, 6, 7, and 8.

F. That three (3) calendar days, as an additional 72 hours of commercial grace, after receipt of said NOTICE OF FAULT, as was provided, have elapsed since the day each RESPONDENT was served with a copy of NOTICE OF FAULT, excluding the day of service, and no RESPONDENT has made a response within three (3) days, and has made no response to current date.

G. Each RESPONDENT herein has failed to answer all said instruments and otherwise did not meet the requirements of the instruments and that the requirements for entry of Default, Dishonor, and Decision by Creditor are met.

H. On or about the 26th day of October, AD 2004, Creditor did enter upon the Administrative Record a DEFAULT, DISHONOR, and DECISION and each RESPONDENT was served a true and correct copy of same as a 90 day Statement billing. A copy of proof of service is attached hereto as Exhibits 9, 10, 11, and 12.

C O N C L U S I O N S O F L A W

Foundational Preface from "CONCLUSIONS OF LAW", ADMINISTRATIVE JUDGMENT AJ 7-21-98

Effective: 14 September, AD 1998, nunc pro tunc

"IV. RICHARD W. PACE and MARY J. PACE have abandon all legal claims as may be, applied against the COOPER FAMILY CHRISTIAN EQUITY TRUST, a trust, Washington county, State of Utah, and their SUCCESSORS and ASSIGNS as may be, to the following described tract of land in Utah County, State of Utah:

> COM 415.10 FT E OF NE COR, BLK 8, PLAT C, PROVO CITY SURVEY:
> E 66.84 FT; S 89.30 FT; W 66.84 FT; N 89.30 FT TO BEG.
> AREA .14 OF AN ACRE.

"V. RICHARD W. PACE and/or MARY J. PACE, their successors and assigns as may be, may not argue, controvert, or otherwise protest the administrative findings entered, as based upon PACE'S Default to CFT's administrative process, nor in any subsequent administrative or judicial proceeding, wherein the COOPER FAMILY CHRISTIAN EQUITY TRUST, a trust, Washington, county, State of Utah, and their SUCCESSORS and ASSIGNS as may be, has the right to take the subject matter to any court that they may choose."

NOTE: Two case numbers have appeared on the pleadings, as No. 020405508 and 020408808,

#1 RESPONDENT Lynn W. Davis works at 125 North 100 West, Provo, Utah 84601, and is employed as a district court officer, judge. This RESPONDENT is named in his individual private capacity.

#2 RESPONDENT Rodney W. Rivers lives at 497 North 800 East, Lindon, Utah 84042, and is employed by R. Pace and M. Pace RESPONDENTS, as a Court officer attorney at law. This RESPONDENT is named in his individual private capacity.

#3 RESPONDENTS Richard W. Pace and Mary J. Pace, individually, live at 1350 East 300 North, American Fork, Utah 84003, and each is a complainant. Each RESPONDENT is named in his and her individual private capacity.

#4 It is deemed a concluded fact that Richard W. Pace, Mary J. Pace, Rodney W. Rivers, and Lynn W. Davis are each an ACCOMMODATION PARTY for RICHARD W. PACE,

CONCLUSIONS OF LAW

MARY J. PACE, RODNEY W. RIVERS, and LYNN W. DAVIS, respectively, by their acts and actions of individually signing commercial paper for the purpose of lending his/her name, to give credit, to another party to instrument(s) signed, and at the request of another, and for the purpose of securing to him/her a benefit, each is a SURETY, respectively, and become responsible for the performance by the latter.

#5 RICHARD W. PACE, MARY J. PACE, RODNEY W. RIVERS, and LYNN W. DAVIS, are jointly and severally RESPONDENT parties to this DEMAND, hereinafter "RESPONDENT(S)".

#6 On or about 11 December, AD 2002, R. Pace and M. Pace, contracted with R. Rivers to represent their private interest; and thereafter R. Rivers contracted with the public Court to have L. Davis, judge, to provide both plaintiff and defendants due process of law judicial process in Civil No. 020408808, as a condition of contract, prior to entering the jurisdiction of the court, or judgment.

#7 R. Pace and M. Pace amended their complaint on 27 December, AD 2002, which centered on a Tax Deed purchased by R. Pace and M. Pace on 15 May, AD 1997, to land owned by CFT earlier to which R. Pace and M.Pace did claim a 63% interest and sought in case No. 020408808:

1. Partition to sell Tax Deed property and divide proceeds, 63%, 37%.
2. By conversion/exclusion lost income of $50,000, May 1997 to Jan. 2003.
3. Quiet title to secure 63% interest in property.
4. For wrongful lien by successor owners of $10,000.00.

#8 CREDITOR commenced to timely answer the Pace complaint by bringing before the Court substantive rights issues, with the primary controversy being the Court's bar against the CREDITOR's free exercise of secured and protected Natural Law (international) constitutional rights and substantive civil rights to defend and protect land and property under his stewardship contracts and as need to speak for CFT, COG and JERRY 20, and not to be impaired in doing so.

#9 CREDITOR further demanded on and before, and after, 23 May, AD 2003, by a Petition in writing for a Trial by Jury, the fee having been satisfied, to obtain a court of justice trial by jury and not an advisory "type" jury.

#10 On 23 May, AD 2003, CREDITOR gave personal NOTICE to each RESPONDENT with a CAVEAT concerning his authorization to appear under contract obligations for any and all entities under his charge as a private contract right; and claimed all rights, privileges and immunities as secured and protected, giving express and implied NOTICE as to invasion of said rights under Webster Bivens, 403 US 388, inter alia, and 42 USC 1986, 1985 and 1983, if RESPONDENTS should so do.

#11 On or about 12 June, AD 2003, R. Pace, M. Pace and R. Rivers sought for an ORDER from L. Davis, judge, as follows:

1. To Disqualify CREDITOR from acting as legal counsel for COG and CFT.
2. To strike all pleadings/documents by CREDITOR for CFT and COG.
3. JERRY 20, CFT, and COG have twenty (20) days to hire a legal counsel.

#12 On or about 12 June, AD 2003, L. Davis, judge, ordered R. Rivers to prepare an Order barring CREDITOR from appearing for JERRY 20, CFT and COG.

C O N C L U S I O N S O F L A W

#13 On and before, and after, CREDITOR demanded that L. Davis, judge, to show his authorization of law on the record which would support his ORDER barring CREDITOR to defend under his stewardship contract(s) in CFT, COG or others.

#14 At no time did any RESPONDENT reveal to CREDITOR any authority to support the ORDER to disbar or disqualify the CREDITOR from defending under his contracts.

#15 On or about 12 December, AD 2003, RESPONDENT R. Rivers alleged in his proposed order that CREDITOR was "not licensed to practice law in the state (for emphasis see #16) of Utah from representing the Cooper Family Christian Equity Trust, the Celestial Organization Group, and the Jerry 20 Charitable Trust,"

#16 It is deemed a concluded fact that it was RESPONDENTS', R. Rivers and L. Davis, claim, by the use and acceptance of the lower case "s" in the term "state of Utah", that it was "their" intent that the republic Utah, 1896, and the Republic United States of America, 1789, did not secure and protect the CREDITOR's private (international) Natural Law constitutional rights, privileges and immunities on and before 7 January, AD 2004.

#17 On 7 January, AD 2004, RESPONDENT L. Davis, accepted the proposed Order of 12 December, AD 2003, and did strike all of the CREDITOR'S pleadings and answers for CFT and COG and jury trial, which created a default by the striking of the answers and pleadings of CFT and COG to the PACE Complaint, and then ordered the land and property to be sold giving M. Pace and R. Pace, 63% of the sale price, plus $50,000.00 in lost income and $10,000.00 for wrongful lien claim.

#18 It is a fact that the Bill of Rights, 1791, did Amend the Constitution of the United States, 1789, which made clear that men's rights, privileges and immunities which were secured and protected thereby, were those in existence prior to 1789, and were prohibited from being impaired by the legislative venue/jurisdiction of the UNITED STATES [Incorporation], including all future State legislative venue/jurisdictions, including the STATE OF UTAH [Incorporation], 7 January, AD 2004.

#19 On or about 7 January, AD 2004, by the concerted actions of all RESPONDENTS an ORDER was fashioned and executed under color of State statute, ordinance, regulation, custom, or usage. See Attachment #3 herewith as a true copy.

#20 Each RESPONDENT on or about 20 January, AD 2003, received actual NOTICE of a true and correct copy of Offer, Fault and Default, parts of Attachment #1 of the Administrative Record without the Administrative Judgment.

#21 No RESPONDENT has given NOTICE to the CREDITOR of what statute, ordinance, regulation, custom, or usage, was used to support the ORDER of 7 January, AD 2004, which in force and effect compelled CREDITOR's performance to hire an attorney, Mr. Vincent C. Rampton (USB 2684), to retrieve the lost land and property of COG, CFT, and JERRY 20, as may be.

#22 RESPONDENTS R. Pace and M. Pace, have claimed since 15 May, AD 1997, the date Paces bought the Tax Deed to the CFT property, up to 12 December, AD 2003, that Paces had a right and have been prohibited or restricted from using or benefiting from their 63% interest right in the Tax Deed property.

C O N C L U S I O N S O F L A W

¶23 That examination of CFT's private files and all records available to the Creditor shows that there has been no contact or communication from any Pace or Pace representative, from 15 May, AD 1997, through to 11 December, AD 2002, evidencing a claim, demand or a request of any kind seeking to have access to, or use of, or to seek a benefit from, in regard to Pace's Tax Deed claim.

¶24 That examination of CFT's private files and all records available to the CREDITOR shows that there is no contract or communication from any Pace, or Pace representative, from 15 May, AD 1997 through to 11 December, AD 2002, evidencing a claim or demand for compensation in lieu of use of Tax Deed land.

¶25 That examination of the exclusive administrative record (available for judicial review), as Attachment #1 , shows that RESPONDENTS R. Pace and M. Pace have been fully, lawfully and equitably, compensated or satisfied for whatever interest that may have been due them as to the Pace Tax Deed investment.

¶26 On or about 23 May, AD 2003, all RESPONDENTS were given NOTICE that CREDITOR's responsibilities under stewardship contract obligations as Trustee/Director are of a protecting nature and none of the activities performed by the Trustee/Director can be construed as the "practice of law" by the Creditor, as the office of "protector" is a custom and a private (international) Natural Law right long enjoyed and secured for trustees of private trusts from time immorial.

¶27 As a direct result of RESPONDENTS' concerted actions to seek and obtain the ORDER of 7 January, AD 2004, did cause injury by impairment of CREDITOR's rights in contracts and others under color of State law and the CREDITOR was compelled to make a considerable outlay of private funds to hire Mr. Vincent C. Rampton (USB 2684), attorney, to stop the injury and to try to make good the wrong done by the RESPONDENTS, jointly and severally.

¶28 On 7 January, AD 2004, RESPONDENT L. Davis, judge, did execute an ORDER and Court did execute the proposed "Findings of Fact, Conclusions of law and Order of Judgment" bearing a mailing date of 12 December, AD 2003.

¶29 **The Parties**

a. Is being brought by Jerry C. Cooper, Record Owner, Notice of Interest Creditor, herein "CREDITOR/Creditor", for himself, and as Successor Trustee for private COOPER FAMILY CHRISTIAN EQUITY TRUST, aka CFT MANAGEMENT, aka CFT, and as Director for private CELESTIAL ORGANIZATION GROUP, aka COG,
245 Astro Drive
Kelso, Washington [near 98626]

b. [A Real Party of Interest, Noticee]
[STATE OF UTAH (Incorporation), Officers, agents, successors, counsels, etc.]
[Governor, UTAH STATE CAPITOL BUILDING, % UTAH ATTORNEY GENERAL]
[UTAH STATE CAPITOL BUILDING]
[Salt Lake City, Utah]

c. Is being brought against Notice of Interest Respondents, herein "RESPONDENTS/Debtors", jointly and severally [In Fraud under Color of Law/Office],
RICHARD W. PACE
MARY J. PACE
1350 East 300 North
American Fork, Utah 84003

C O N C L U S I O N S O F L A W

RODNEY W. RIVERS, Attorney at Law
497 North 800 East
Lindon, Utah 84042
Honorable LYNN W. DAVIS, District Court Judge
% 125 North 100 West
Provo, Utah 84601

#30 This is NOTICE OF REJECTION OF OFFER TO CONTRACT by Special Appearance.

This matter is In the nature of an Independent Private International Natural Law Administrative Remedy.

#31 On or about 12 June, AD 2003, in Utah, and in consideration of the foregoing ISSUES of Fact, #1 through #30, RESPONDENTS,R. Pace, M. Pace, and R. Rivers sought for an ORDER from the Court which was granted on or about 12 December, AD 2003, by RESPONDENT L. Davis, judge, which ORDER was under color of Utah statutes, ordinance, regulation, custom, or usage, subjected CREDITOR as a person within the jurisdiction of the United States of America to the deprivation of rights, privileges, or immunities secured by the Constitutions and laws of Utah and the United States of America, which did interfere with the CREDITOR'S Natural Law constitutional rights and civil rights by impairment under color of State law, which ORDER in force and effect did strike all pleadings, all defenses, and other documents filed in the Court by the CREDITOR, for and in the capacity of a commissioned and authorized Director and Trustee under a private stewardship contract to protect all Land and property of the private Celestial Organization Group, and private JERRY 20 Charitable Trust, and the private Cooper Family Christian Equity Trust, each created under private (international) Natural Law, secured and protected under the Bill of Rights, 1791, Amendment to the Constitution of the United States, 1789, [Republic](without the legislative venue/jurisdiction of the UNITED STATES [Incorporation]), and the ORDER did strike the contract with the Court for a Trial by Jury court of justice, the fee having been satisfied for Civil No. 020408808, the said act did not preserve to the CREDITOR his stewardship contract under provision's command of Art. I, Sec. 10, Cl. [1], "No State shall...pass any...Law impairing the Obligation of Contracts,...", and Amendment [V, 1791], "No person shall be...deprived of life, liberty, or property, without due process of law;...", Constitution of the United States, 1789, [Republic](without the legislative venue/jurisdiction of the UNITED STATES [Incorporation]); it has been deemed that violating, depriving, trespassing on, or interfering with, secured constitutional rights, privileges, or immunities, is an offense so serious that it is beyond satisfaction , merely obtained by payment of money damages, thus RESPONDENTS ought to be put in jail, and as rights were demanded PRIOR to deprevation, jail time ought to be doubled (as it is for road construction after given a slow-down warning), but in consideration of Title 28 USC 1331(a), the claim in a "rights" action must "exceed the sum of value of $50,000.00, exclusive of interest and costs", and the CREDITOR is entitled to and hereby claims injuries resulting in damages as just compensation in the amount of ONE HUNDRED THOUSAND United States Dollars ($100,000.00), jointly and severally, from each RESPONDENT. [[Cf. 42 USC 1983 and Bivens v. 6 Agents (1971)]

Note: "Cf." means compare for contrasted, analogous, or explanatory view.

[Note: Conclusions of Law #32 through and including #72 have not been reproduced herein but by reference are made a part hereof in full hereinat as found in the Declaration and Notice of DEFAULT, DISHONOR and DECISION, Tracking No. 7-21-98-F1. However, #31 has been set out in full above to show format example used in each of the other forty-one (41) individual and separate Conclusions of Law, each different and distinct. Verified or plain true copies may be obtained from the Record Owner for a reasonable fee. Each RESPONDENT/Debtor was given individual notice on or about 23 May, AD 2003, that Creditor was an aggrieved party who had demanded all of his secured rights and gave CAVEAT that remedy or relief in the nature of Title 42 United States Code 1983, 1985, or 1986 may be sought as well as Bivens vs. Six Agents, 403 US 388, 29 LEd2d 619, 915 S.Ct 1999, may be considered if secured rights are invaded, deprived or otherwise impaired.]

D E C I S I O N

Accordingly,

I. IT IS THE DECISION based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law that Richard W. Pace, Mary J. Pace, Rodney W. Rivers, and Lynn W. Davis, are each an ACCOMMODATION PARTY and SURETY bound with RICHARD W. PACE, MARY J. PACE, RODNEY W. RIVERS, and LYNN W. DAVIS, respectfully, as Debtors, severally and jointly, for the payment or satisfaction of all liability, debt or obligations incurred in NOTICE and DEMAND, Tracking No. 7-21-98-D1, and other charges or fees which may be incurred in any collection actions through RESPONDENTS/Debtors' failure to honor said liability, debt or obligations.

II. IT IS THE FURTHER DECISION based upon the factual and legal determinations of the Findings of Fact, A. through and including H., and Conclusions of Law, #1 through and including #72, that each ISSUE does address the acts, duties or relationship of RESPONDENT as public persons, who have each acted in some capacity as agents, for themselves or others, which acts have been deemed prejudicial to Creditor's secured Constitutional rights, privileges or liberty interests.

III. IT IS THE FURTHER DECISION based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law that ISSUES #1 through and including #30 must be construed as part of each ISSUE, #31 through and including #72; in that context it has been deemed that each ISSUE, #31 through and including #72, constitutes a separate and distinct act wherein Creditor's secured Natural Law rights, privileges, or immunities and/or Constitutional rights, privileges, or immunities, have been by each RESPONDENT, jointly and severally, impaired or deprived under color of the Utah law by conspiracy did cause injury and damaged to the Creditor, as defined by each ISSUE independently.

D E C I S I O N

IV. **IT IS THE FURTHER DECISION** based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law, it has been deemed that damages as just compensation in the sum of value of ONE HUNDRED THOUSAND United States Dollars ($100,000.00) for each ISSUE, #31 through and including #71, is an equitable amount and is the decision.

V. **IT IS THE FURTHER DECISION** based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law, it has been deemed as to ISSUE #31 through and including #72, that the following amount in sum value of FOUR MILLION TWO HUNDRED THOUSAND United States Dollars ($4,200,000.00), constitutes the total Debt due and owing, by each RESPONDENT as Debtor, severally and jointly, with no interest thereon, to the Creditor, Jerry C. Cooper, his heirs, representatives, or assigns, as may be.

VI. **IT IS THE FURTHER DECISION** based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law that upon service of a true and correct copy of the instrument identified as **DEFAULT, DISHONOR and DECISION**, upon each RESPONDENT/Debtor, does constitute a Statement and Demand for payment or satisfaction in full, of the Debt sum due is FOUR MILLION TWO HUNDRED THOUSAND United States Dollars ($4,200,000.00), with no interest thereon.

VII. **IT IS THE FURTHER DECISION** based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law that the said Statement and Demand for payment is a "true bill in commerce" wherein each RESPONDENT/Debtor, severally and jointly, have ninety (90) days after service of same in which to pay or satisfy the Debt or obligation to the Creditor, or his agent, Wayne Rulan Bevan, agent, %3865 No. Quail Summit Lane, Provo, Utah [84604], and thereafter said "account receivable" becomes a "commercial lien" and can attach to property.

VIII. **IT IS THE FURTHER DECISION** based on the governing law of a "true bill in commerce" that anytime after ninety (90) days, after receipt of Statement, that if there is an unpaid or unsatisfied Debt balance due to the Creditor, the Creditor, or his heirs or assigns, as may be, has a Right of Lien to execute a Lien Hold Claim in the amount of the unpaid or unsatisfied Debt obligation, as may be, against any and all property of each RESPONDENT/Debtor's property, and all that which may be distressed/arrested/impounded/use-suspended as may be in third party custody, until the 1st day of January, AD 2105, defined as a Lien Hold Claim, as a term of one hundred one years. ["The ability to place a lien upon a man's property such as to temporarily deprive him of its beneficial use, without any judicial determination of probable cause dates back not only to medieval England but also to Roman times." Cf. Sniadach v.

D E C I S I O N

Family Finance Corp., 395 US 337, 349 (1968), supported by the California Supreme Court, 1971, Randone v. Appellate Dept. 5 C3d 536, 96 Cal Rptr 709, and 448 P2d ___.]

IX. **IT IS THE FURTHER DECISION** based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law that Creditor's Right of Lien is in the nature of a commercial lien and is not a lis pendens lien, is not a statutory lien, and is not a common law lien, and does not require a court process for its establishment, validity, or execution and it cannot be removed by summary process (judge's discretion), nor by anyone except the authorized person, who alone holds the Right of Lien to the Lien Hold Claim(s), as may be.

X. **IT IS THE FURTHER DECISION** based upon the factual and legal determinations of the Findings of Fact and Conclusions of Law that said AFFIDAVIT OF NOTICE AND DEMAND constitutes a **TRUE BILL IN COMMERCE** established by Creditor's Statement under affidavit, certified and sworn as to ledgering, or accounting, with every entry, by number, verified and sworn as true, correct and complete, and not misleading, in good faith and not in bad faith, under penalty of perjury, which has been further assented to by each RESPONDENT/Debtor.

XI. **IT IS THE FURTHER DECISION** that the authorized person having the Right of Lien, to the Lien Hold Claim(s), may open by administrative procedure for further remedy or relief until the attainment of the ends of justice have been satisfied anytime prior to the 1st day of January, AD 2105.

Further Declarant says not.

Given under my hand and seal this the

12 day of November AD 2004.

Kenneth James: Nielson S.L.

Declarant:
[print] Kenneth-James: Neilson

ADMINISTRATIVE JUDGMENT

Claim AJ-2 7-21-98

I, the Hearing Officer, declare that I am learned in the Law and have knowledge of the principles and procedures required for the exhaustion of administrative remedies and I am competent to make an administrative determination.

I, the Hearing Officer, acting in the capacity of an Administrative Reviewer, have determined from the administrative record that the correct process has been completed.

The administrative record shows that Richard W. Pace, Mary J. Pace, Rodney W. Rivers, and Lynn W. Davis, each has stipulated to the "Foundational Preface from "CONCLUSIONS OF LAW", ADMINISTRATIVE JUDGMENT, AJ 7-21-98, Effective: 14 September, AD 1998, nunc pro tunc" as admitted undisputed fact by TACIT PROCURATION, Stare Decisis, as follows:

"IV. RICHARD W. PACE and MARY J. PACE have abandon all legal claims as may be, applied against the COOPER FAMILY CHRISTIAN EQUITY TRUST, a trust, Washington county, State of Utah, and their SUCCESSORS and ASSIGNS as may be, to the following described tract of land in Utah County, State of Utah:

COM 415.10 FT E OF NE COR, BLK 8, PLAT C, PROVO CITY SURVEY:
E 66.84 FT; S 89.30 FT; W 66.84 FT; N 89.30 FT TO BEG.
AREA .14 OF AN ACRE.

"V. RICHARD W. PACE and/or MARY J. PACE, their successors and assigns as may be, may not argue, controvert, or otherwise protest the administrative findings entered, as based upon PACE'S Default to CFT's administrative process, nor in any subsequent administrative or judicial proceeding, wherein the COOPER FAMILY CHRISTIAN EQUITY TRUST, a trust, Washington, county, State of Utah, and their SUCCESSORS and ASSIGNS as may be, has the right to take the subject matter to any court that they may choose."

The administrative record shows that Richard W. Pace, Mary J. Pace, Rodney W. Rivers, and Lynn W. Davis, each has stipulated to the FINDINGS OF FACT, A. through and including H., as admitted undisputed fact by TACIT PROCURATION, Stare Decisis.

The administrative record shows that Richard W. Pace, Mary J. Pace, Rodney W. Rivers, and Lynn W. Davis, each has stipulated to the CONCLUSIONS OF LAW, Issue #1 through and including Issue #72, as admitted undisputed fact by TACIT PROCURATION, Stare Decisis.

Accordingly, the administrative record shows that DECISION has been entered against Richard W. Pace, Mary J. Pace, Rodney W. Rivers, and Lynn W. Davis, and in favor of Jerry C. Cooper, for himself, and as Successor Trustee for private COOPER FAMILY CHRISTIAN EQUITY TRUST, aka CFT MANAGEMENT, aka CFT, and as Director for private CELESTIAL ORGANIZATION GROUP, aka COG.

ADMINISTRATIVE JUDGMENT

Claim AJ-2 7-21-98

As an operation of Law, administrative admitted facts are not subject to reconsideration in any action in Law, Commerce, or otherwise.

JUDGMENT IS SO ENTERED.

Given under my hand and seal this the 12 day of November, AD 2004.

Kenneth James Nielson
Administrative Hearing Officer

The United States of America
Private Administrative Hearings Officer
JUDGE
1791 anno Domini

SUBSCRIBED AND SWORN TO before me, personally appeared before me Kenneth James Nielson, and upon proper identification, did execute the foregoing ADMINISTRATIVE JUDGMENT on this 12th day of November, AD 2004.

Becky Hansen
NOTARY PUBLIC

Seal

BECKY HANSEN
NOTARY PUBLIC • STATE of UTAH
1025 WEST RED CLIFFS DRIVE
WASHINGTON, UTAH 84780
COMM. EXPIRES 4-29-2006

Prepared and submitted on this 8th day of November, AD 2004.

JCC
Jerry C. Cooper, Creditor

Addendum B

Brent M. Johnson (5495)
Attorney for Judge Lynn W. Davis
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Tel: (801) 578-3800

THIRD DISTRICT COURT
SALT LAKE COUNTY, UTAH

JUDGE LYNN W. DAVIS, in his official capacity as judge of the Fourth District Court, Petitioner, vs. JERRY C. COOPER, Respondent.	)	**ORDER** Case No. 050906021 MI Judge Anthony Quinn

This matter having come on for hearing on May 10, 2005 at 8:30 a.m. The Petitioner appeared through counsel Brent M. Johnson of the Administrative Office of the Courts. The Respondent Jerry Cooper failed to appear. The court reviewed the arguments of the parties and has made findings of fact and conclusions of law.

IT IS HEREBY ORDERED as follows:

1. The document entitled "Administrative Judgment" recorded on November 15, 2004 in the office of the Utah County Recorder against Lynn W. Davis is a wrongful lien under Title 38, Chapter 9 of the Utah Code.

2. The document is void ab initio.

3. This order may be recorded in the Utah County Recorder's Office, along with a legal description of Lynn W. Davis' property to have the wrongful lien removed from any property owned by Lynn W. Davis.

4. Petitioner is entitled to reasonable costs and attorney's fees under Utah Code Ann. § 38-9-7(5)(c) and the schedule in Rule 73 of the Utah Rules of Civil Procedure. The award is as follows: Attorney's fees $150.00 and service fees $45.00, for a total of $195.00.

DATED this 20th day of May, 2005.

Honorable Anthony Quinn

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.
DATE: 11/28/2005
DEPUTY COURT CLERK

MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Order was mailed first class, postage prepaid and addressed as follows on this 10th day of May, 2005.

Jerry C. Cooper
245 Astro Drive
Kelso, Washington 98626

Diana Pollock

Diana Pollock

Addendum C

INSTRUCTION NO 34

The document entitled "Adminstrative Judgment" recorded on November 15, 2004 in the office of the Utah County Recorder against Lynn W. Davis is a wrongful lien under Title 38 Chapter of the Utah Code.

Judge Anthony Quinn
Case No. 040906021 MI
Order dated May 20, 2005
Third District Court
County of Salt Lake, State of Utah